

COPY

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE
BEFORE ITS PRESIDING SPECIAL MASTER
THE HONORABLE RODNEY DAVIS

INQUIRY CONCERNING A JUDGE

No. 109

) AMENDED NOTICE OF
) FORMAL PROCEEDINGS
) (Rule 911, California
) Rules of Court)
)

THE NOTICE OF FORMAL PROCEEDINGS PREVIOUSLY FILED IN THIS MATTER
ON SEPTEMBER 2, 1993, IS HEREBY AMENDED AS FOLLOWS:

TO JUDGE JOHN E. FITCH:

It appearing that since October 17, 1980, and at all times
herein, you have been a judge of the Superior Court, County of
Fresno; and

Preliminary investigation having been made pursuant to the
provisions of rule 904 of the California Rules of Court
concerning censure, removal, retirement or private admonishment
of judges, during the course of which preliminary investigation
you were afforded a reasonable opportunity to present such
matters as you chose, and this commission as a result of
preliminary investigation, having concluded that formal
proceedings to inquire into the charges against you shall be
instituted pursuant to section 18 of article VI of the California

Constitution and in accordance with rules 901-922, California Rules of Court,

NOW THEREFORE, you are charged with conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The particulars of the charges are as follows:

COUNT ONE

It is alleged that you have engaged in a pattern of inappropriate comments in the workplace concerning the physical attributes and clothing of female members of the court staff. Such conduct is exemplified by, but not limited to, the following instances:

(a) Between 1988 and 1991, you made repeated comments regarding assigned court reporter Michelle Wisemer's buttocks, including the comment, "Your butt looks good in that dress," after directing her to stand up and turn around so you could look at her. Once you referred to her as a "nalgas elefante" which is supposedly Spanish for "elephant butt." You once stated to her, "Don't bend over like that in front of me. I get ideas." On another occasion, you told her that she "probably had freckles on her titties."

(b) On or about calendar year 1991, you made comments to Jennifer Morris, in the presence of others, concerning the fact that Morris's black brassiere strap was showing.

(c) Between 1984 and 1990, you commented to Court Clerk Linda Chappell that she had "nice legs" and that she had a "nice chest."

(d) Between December, 1985, and June, 1988, you made repeated remarks concerning court reporter Ramona Schott Woodson "looking good" because her clothing was "tight" around her breasts.

(e) During calendar years 1989 and 1990, you remarked to court reporter Kathleen Papadakis that if she was wearing a V-neck blouse you could really see some cleavage.

COUNT TWO

It is alleged that you have engaged in the workplace in a pattern of inappropriate and offensive remarks concerning the intimate relationships of court attaches or attorneys with their spouses. Such conduct is exemplified by, but not limited to, the following instances:

(a) On or about June, 1990, at the funeral of Judge Mario Olmos, you embraced Ms. Papadakis. Your hand slipped under her jacket and unintentionally touched her breast. She turned away. You then leaned forward to kiss her on her mouth, but she turned away. A few days later, you stated in front of others, "I certainly hope you're not that frigid with your husband." (b) Between 1988 and 1991, you saw a red mark on court reporter Wisemer's chest and asked, in the presence of others, "What is

that mark on your cleavage?" "Did Victor do that?" "How did you get that?"

(c) Between 1989 and 1991, and in chambers during a sexual assault prosecution, you were discussing evidence of bite marks or "hickies" with counsel. You then commented to Deputy District Attorney Jamileh Schwartzbart, in the presence of defense counsel, that "Well, I bet Jamileh's never done that with her husband," or words to that effect.

(d) Between 1988 and 1990, you remarked to court reporter Papadakis, regarding court reporter Wisemer's dress, that "if I were her husband, I wouldn't let her out of the house with a dress that fit like that over her rear."

COUNT THREE

It is alleged that you have engaged in a pattern of offensive or crude remarks in the workplace in the presence of assigned court staff. Such conduct is exemplified by, but not limited to, the following:

(a) During calendar year 1991 or 1992, you were discussing a janitorial employee with reporter Wisemer. After she mentioned that the janitor made her feel uncomfortable, you stated, "Well, the only thing he's done to me is he's gone down on me a couple of times, but, you know, I don't think he's weird."

(b) In calendar year 1992, reporter Wisemer used the lavatory in your chambers. You later asked your staff who was in

your bathroom because "it smelled like someone died in there." After you were told it was Wisemer, you said, "That's impossible, it smelled like an old sailor or old man had gone to the bathroom in there," or words to that effect. You later said to Wisemer, "I'm sorry I said anything about your stinky poo-poo."

(c) Between 1985 and 1988, you questioned assigned court reporter Ramona Woodson as to whether she was having her menstrual period because she was acting "really bitchy."

(d) Between 1985 and 1988, you told a dirty joke to reporter Woodson about Helen Keller in which you used your fingers to demonstrate the punchline of the joke. This joke was told shortly after you moved to Department 5. Woodson told you she thought the joke was disgusting and walked into her office.

COUNT FOUR

It is alleged that you have engaged in a pattern of inappropriate and nonconsensual touching of female members of the court staff, or have attempted to do so. Such conduct is exemplified by, but not limited to, the following instances:

(a) On or about June, 1990, at the funeral of Judge Mario Olmos, you embraced reporter Papadakis. Your hand slipped under her jacket and unintentionally touched her breast. She turned away. You then leaned forward to kiss her on her mouth, but she turned away.

(b) Between July, 1988, and December, 1989, you slapped reporter Wisemer on the buttocks at the workplace. She told you never to do it again.

(c) In either 1989 or 1990, you again slapped reporter Wisemer on the buttocks at the workplace. She again told you never to do it again.

(d) Between July, 1988, and December, 1991, you attempted to slap court reporter Lisa Ortez-Tow on the buttocks, while she was in the hall outside your chambers. She then stated, "Don't even think about it."

(e) One weekend shortly after you moved to Department 5, reporter Woodson was working in her office at the Fresno County Courthouse. You telephoned her at the extension number assigned to her personally. About twenty minutes later, you appeared in her office with a bottle of wine which you gave her as a gift. When Woodson kissed you on the cheek in appreciation, you attempted to kiss her on the lips. Your actions, which appeared to be a sexual advance, were unwanted and Woodson turned away. You went into your chambers for a short time and then left the building.

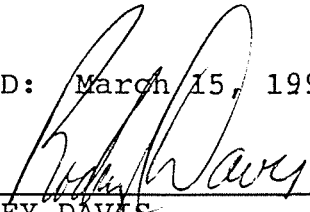
(f) Between March 20, 1989 and October 31, 1989, in the common area immediately outside your chambers, you patted Nancy Wallace, a trainee court clerk, on the buttocks while stating "Well, I just couldn't resist." Ms. Wallace was offended by this conduct, which occurred in the presence of other court staff.

(g) In calendar years 1989 or 1990, in or near the hallway behind your courtroom, you were asked by court reporter Leslie Bjerke to button a loose button on the back of Ms. Bjerke's dress. Instead, you unbuttoned an additional button or two and had to be directed by Ms. Bjerke again to button up her dress.

It is asserted that your conduct as charged in this notice constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of California Constitution, article VI, section 18, subdivision (c).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE
THROUGH ITS PRESIDING SPECIAL MASTER, THE
HONORABLE RODNEY DAVIS

DATED: March 15, 1994



RODNEY DAVIS
Presiding Special Master